

1 FMCS ARBITRATION

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3 In the matter of an arbitration between:

4 UAW LOCAL 1186,) Case No.
5) 040921-08284-7
6 and)
7) Grievance No.
8) 04-35-HP6
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7 TRANSCRIPT OF PROCEEDINGS
8 Wednesday, January 26, 2005

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10 The above matter came on for hearing before
11 ROBERT A. CREO, Impartial Arbitrator, at FMCS, 410
12 Cranberry Street, Suite 110, Erie, Pennsylvania
13 16507, commencing at 8:45 o'clock a.m. on the day and
14 date above set forth.

15 APPEARANCES:

16 On behalf of the Company:

17 Ryley Carlock & Applewhite:
18 Frederick C. Miner, Esquire
19 One North Central Avenue, Suite 1200
20 Phoenix, Arizona 85004-4417

21 On behalf of the Union:

22 Region 9, UAW:
23 Edward J. McGowan
24 35 George Karl Boulevard, Suite 200
25 Amherst, New York 14221

26 ALSO PRESENT:

27 Douglas Ferguson, President Local 1186
28 Gary Montroy, Vice President Local 1186
29 Ron Celeski, Recording Secretary
30 Michael Pinson, Human Resources Manager
31 Pat Wolfe, Director of Compensation/Benefits
32 Lance E. Hannaford, Court Reporter

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1 1998.

2 (Thereupon, Joint Exhibit Nos. 1 through 4
3 were marked for identification.)

4 THE ARBITRATOR: With that I will turn to
5 the union for any type of opening statement or
6 remarks they want to make.

7 MR. MCGOWAN: The case before the
8 arbitrator involves, from the union's point, a
9 charge of a breach of the current collective
10 bargaining agreement.

11 It involves the company's refusal to
12 provide health insurance benefits and other
13 benefits to active employees pursuant -- union
14 argues pursuant to terms of the current
15 collective bargaining agreement.

16 The arbitrator will hear and the union will
17 present the factual history and collective
18 bargaining agreements leading up to the issue.

19 The previous collective bargaining
20 agreement contains specific and special terms for
21 a select group of employee -- active Accuride
22 employees, which excluded them from health
23 insurance coverage provided by Accuride.

24 The new collective bargaining agreement
25 specifically does not contain those terms.

1 Those terms were specifically excluded in
2 collective bargaining.

3 And the company subsequently refused to
4 honor the current terms of the collective
5 bargaining agreement by supplying health
6 insurance, when it was needed, to current
7 Accuride active employees.

8 The union will present a documentary trail
9 that establishes the issues and the basic facts.

10 The argument at issue for the arbitrator to
11 decide is going to be simply the terms of the
12 current collective bargaining agreement, the
13 parties' agreement and the documents itself,
14 which quite frankly speak for themselves.

15 And the union will argue that those
16 documents and the agreements provide for a
17 company obligation to provide medical insurance
18 to active, current active Accuride employees.

19 There is no exclusionary provisions in the
20 current contract.

21 There are no waivers in the current
22 contract.

23 As such, the union argues they are an
24 employee with the same rights and obligations
25 from the company pursuant to provision of health

1 insurance as any other employee.

2 THE ARBITRATOR: What remedy do you seek?

3 MR. MCGOWAN: Basically, the union seeks
4 the reactivation of the health insurance from
5 the -- back from the date when the employees
6 became eligible.

7 And if that is not possible, the union
8 would request that the company or the arbitrator
9 award any costs, which the employees have
10 undergone, such as medical services, which the
11 insurance would have paid for, had they been
12 covered.

13 THE ARBITRATOR: Okay.

14 Turn to the employer, if you want to make
15 an opening statement now.

16 MR. MINER: I will reserve my opening
17 statement.

18 But with respect to my understanding of the
19 issue that Mr. McGowan just articulated, I would
20 agree that the issue is whether the company
21 violated the collective bargaining agreement with
22 respect to the grievance in the case.

23 THE ARBITRATOR: Okay.

24 If there are things that are not really in
25 dispute, I don't need to have a lot of witness

1 A I oversee the compensation and benefit
2 programs for Accuride Corporation. I work with the
3 plant locations.

4 Q What kind of business is Accuride in?

5 A We manufacture truck and trailer aluminum
6 and steel parts.

7 Q How many facilities does it currently
8 operate?

9 A We operate four facilities.

10 Q Are you familiar with the Erie facility?

11 A Yes. I am.

12 Q How is that?

13 A I was acting director of human resources in
14 1997.

15 Q How long have you been director of
16 compensation and benefits?

17 A Since 1997.

18 Q In 1997 you had a stint as acting HR
19 manager at the Erie plant?

20 A Yes. I did.

21 Q How long were you at the Erie plant in that
22 role?

23 A Approximately six months.

24 Q How long has Accuride had an interest in
25 the Erie plant?

1 A We joined -- formed a joint venture with
2 Kaiser effective May 1 of 1997.

3 Q Do you know how long the Erie plant has
4 been in operation?

5 A The Erie plant has been in operation since
6 1954.

7 Q Prior to 1997, who operated the Erie plant?

8 A It was Kaiser.

9 Q What is Kaiser?

10 A They are in the aluminum business.

11 Q When did the joint venture come about?

12 A It was effective May 1, 1997.

13 Q Thank you.

14 Was there a name attached to the joint
15 venture?

16 A Yes.

17 It was called AKW, LP.

18 Q I will refer to it as AKW. What kind of
19 entity is AKW?

20 A It is a limited partnership.

21 Q And in May of 1997, who were the parties
22 who had interests in AKW?

23 A Accuride Corporation and Kaiser.

24 Q Were they both partners in the limited
25 partnership?

1 A Yes. They were.

2 Q Is that still true today?

3 A No.

4 Q How many parties have interests in AKW
5 today?

6 A Just one. Accuride Corporation.

7 Q When did Accuride come to acquire all of
8 the interest in AKW?

9 A Kaiser sold its portion to Accuride in 1999.

10 Q Has there been a name change of the entity?

11 A It is now called Accuride Erie, LP.

12 Q And that continues to be a limited
13 partnership?

14 A Yes. It is.

15 Q Has there been any interruption in the
16 limited partnership's existence since it came in to
17 existence in May of 1997?

18 A No.

19 Q While you were the acting HR manager at the
20 Erie plant, were you involved in hiring work force?

21 A Yes. I was.

22 Q I will start by asking for this to be
23 marked as Company Exhibit 1.

24 (Thereupon, Company Exhibit No. 1 was
25 marked for identification.)

1 Q I will ask you to take a look at that.

2 And after you have reviewed it, please
3 identify it for the arbitrator.

4 A Okay.

5 Q What is this document?

6 A It is an internal memorandum that was
7 distributed to all Kaiser UAW hourly employees
8 regarding the application process to become an AKW
9 employee.

10 Q Did you participate in preparing this
11 document?

12 A Yes. I did.

13 Q Is that your signature on page 3 of the
14 document?

15 A Yes. It is.

16 Q Give us a summary, from a 10,000 foot
17 level, how does this application process work?

18 A The application process was that any Kaiser
19 employee, who was interested in being considered for
20 employment with AKW, had to complete an application
21 form, and it had to be turned in by noon on April 8th,
22 1997.

23 Also, the memorandum talked about the steel
24 positions that would be available at AKW.

25 And that the applicant would have to have

1 satisfactory past performance in that position to be
2 considered.

3 And that successful applicants would have
4 to complete a preemployment physical exam and drug and
5 alcohol screen.

6 Q Now, there are a couple of documents that
7 are attached to the internal memorandum.

8 And they start on page 4 of the document.

9 What are these attachments?

10 A The first attachment is an application for
11 hourly employment with a PWLP, which is four pages.

12 There is a preemployment survey that was
13 attached that had to do with the application process
14 as well.

15 And then the last attachment is a list of
16 classifications that would be available at AKW.

17 Q Now, were all of the Kaiser employees, who
18 were interested in employment with AKW, was this the
19 application form that was used for all of those
20 individuals?

21 A Yes. It is.

22 Q And then what is this last page marked
23 appendix B?

24 A Those were the startup classifications that
25 would be available at AKW effective May 1, 1997.

1 He was the chief spokesperson for Accuride.

2 Q Okay.

3 So describe for us what is Company 2?

4 A This is a letter from Phil Miscimarra to
5 Doug Ferguson and Joe Orlando.

6 And it addresses the provisions of opting
7 down to employee only coverage for AKW active
8 employees and opting out of AKW coverage for Kaiser
9 retirees who became AKW employees.

10 Q First, let me make sure I understand these
11 terms.

12 Opting down.

13 What does opting down refer to in the
14 context of an employee who is transitioning from
15 Kaiser to AKW employment?

16 A Opting down provision allowed an employee,
17 if they had coverage, medical coverage with someone
18 other than Kaiser or Accuride to opt down to employee
19 only coverage.

20 And they would have to not cover their
21 dependents, if they could show they had proof for
22 their dependents.

23 Q They could waive coverage for their
24 dependents and presumably not have to pay whatever
25 contributions might be associated with premiums for

1 dependents.

2 Is that correct?

3 A Yes.

4 Q Opting out.

5 That is a different concept.

6 Correct?

7 A Yes.

8 Q In the context of, again, an employee
9 transitioning from Kaiser to AKW employment, how does
10 opting out apply to that situation?

11 A The opting out provision was for Kaiser
12 retirees, who came over -- or became AKW employees.

13 And they had to make an election to either
14 have their medical coverage through Kaiser while
15 actively employed at AKW or they could elect AKW
16 medical coverage while an active employee at AKW.

17 Q Are you familiar with the medical benefits
18 Kaiser provided to its retirees?

19 A Yes. I am.

20 Q And what were those benefits? Describe the
21 program for us?

22 A Well, it was a medical plan through I
23 believe at that time it was Highmark.

24 They had an HMO plan. And a point of
25 service plan.

1 And there were provisions based on points.

2 If an employee had 85 points, if they took
3 retirement from Kaiser, they would receive
4 precoverage. There would be no contribution required.

5 Q And with respect to the entire group of
6 Kaiser employees, who were transitioning to employment
7 with AKW, again, there were some employees among that
8 group, who were eligible for a Kaiser retirement?

9 A That's correct.

10 Q And so they potentially had the opportunity
11 to be covered by Kaiser's retiree medical coverage.

12 Correct?

13 A That's correct.

14 Q So how would the opting out process work,
15 once these individuals became AKW employees?

16 A They were given a form, an election form.

17 And they had to decide, while they were an
18 active employee at AKW, Kaiser retiree, did they want
19 to be covered by Kaiser retiree medical and life plan
20 or did they want to be covered by the AKW medical and
21 life plan while active.

22 Q Is that essentially the substance of the
23 proposal described in Company Exhibit 2?

24 A Yes. It is.

25 Q What were the requirements of the opt-out

1 election that was made available to AKW employees, who
2 also were Kaiser retirees?

3 A A Kaiser retiree could elect to participate
4 in the AKW medical plan, if they so wanted to.

5 And at the time, if they did take
6 retirement at AKW at a later date, then they would
7 become covered under the Kaiser retiree medical plan.

8 It was a one time voluntary election
9 permanent.

10 It could not be changed at a future date.

11 They could also, of course, stay with the
12 Kaiser plan and not participate in the AKW plan.

13 Q I will ask you to look at another letter.

14 And also ask that that be marked as Company
15 Exhibit 3.

16 (Thereupon, Company Exhibit No. 3 was
17 marked for identification.)

18 Q What is this letter?

19 A This is a letter from Phil Miscimarra
20 addressed to Doug Ferguson and Joe Orlando.

21 Q Let me just stop you for a second. Who is
22 Joe Orlando?

23 A Joe Orlando was the international rep with
24 UAW.

25 Q And Doug Ferguson was the president of the

1 local?

2 A Yes. He was.

3 Q I am sorry. I interrupted.

4 A This letter is addressing the opting down
5 provision for Kaiser retirees.

6 It also addresses a question raised by Joe
7 Orlando regarding changing the option of election in
8 the future.

9 Q The letter refers to a question that
10 Mr. Orlando had for Mr. Miscimarra, correct?

11 A Yes. It does.

12 Q How does Mr. Miscimarra answer that
13 question in the letter?

14 A The question was Joe asked whether Kaiser
15 retirees who worked for AKW can elect Kaiser retiree
16 insurance with an additional option of changing their
17 election in the future.

18 Mr. Miscimarra responded this additional
19 option would not be available. And the Kaiser
20 retirees who worked for AKW would have to elect Kaiser
21 retiree insurance coverage on the one hand or elect
22 AKW coverage on the other hand as a one time
23 irrevocable decision.

24 Q I have another document for you to look at,
25 please.

1 I will ask for this to be marked Company
2 Exhibit 4.

3 (Thereupon, Company Exhibit No. 4 was
4 marked for identification.)

5 THE ARBITRATOR: Company Exhibit 4 is the
6 April 13th, 1997 ratification meeting summary?

7 MR. MINER: Correct.

8 BY MR. MINER:

9 Q Pat, what is this document?

10 A This is a document prepared by Phil
11 Miscimarra.

12 It is just a summary of the tentative
13 agreement that he prepared for the union to distribute
14 or review with the membership.

15 Q Does the ratification summary discuss the
16 opting out and opting down provisions that you already
17 described in the foregoing letters?

18 A Yes. It does.

19 Q And where does it describe those issues?

20 A It is on page 9.

21 There is opting out, opting down document.

22 Q Just with respect to the issue of opting
23 out by Kaiser retirees, who were now going to become
24 AKW employees, what was the summary in the
25 ratification summary?

1 A The summary states that Kaiser retirees who
2 were hired as AKW employees and who retired from
3 Kaiser by September 15th, 1997 could make an election
4 to either have Kaiser retiree medical life or AKW
5 medical life insurance for themselves and dependents.

6 And it talks -- the document also explains
7 if the Kaiser retiree elected coverage, they would
8 participate in Kaiser insurance and will not have any
9 future AKW insurance.

10 Q Where are you reading from? I can see you
11 are reading from the document.

12 A Yes.

13 I am reading under the heading called
14 "Agreement". Just reviewing those bullets, 1, 2, 3, 4
15 and 4A.

16 Q Great. Thank you.

17 I will give you another document.

18 This has already been marked Company
19 Exhibit 5.

20 (Thereupon, Company Exhibit No. 5 was
21 marked for identification.)

22 Q What is Company 5?

23 A This is an internal memorandum that I
24 prepared and distributed to the AKW startup hourly
25 employees in May of 1997.

1 Q And who were the startup hourly employees?

2 A Those were Kaiser employees who came over,
3 applied for and became AKW employees.

4 Q Okay.

5 So these were already AKW employees by the
6 time Company Exhibit 5 was distributed to them.

7 Correct?

8 A Yes.

9 The date is May 9th, 1997.

10 Q Okay.

11 And what is the subject of this internal
12 memo?

13 A The subject matter is opting down
14 provisions and then opting out provisions for the
15 Kaiser retirees, who became AKW employees.

16 Q Again, specifically with respect to the AKW
17 employees who also were Kaiser retirees, what does the
18 memo say about the opting out issue?

19 A The memo states that Kaiser retirees would
20 have an irrevocable one-time voluntary election to opt
21 for Kaiser retiree medical coverage or opt for AKW
22 medical and life coverage while actively employed at
23 AKW.

24 And that the Kaiser retirees -- this option
25 would be permanent and irrevocable.

1 And that it could not be changed at future
2 time. Election couldn't be changed at a future time.

3 Q Where are you reading from, again, on this
4 document?

5 A I am on page 2 of the memorandum. Under
6 item No. 1.

7 Q Where it says, "Opting out of AKW insurance
8 in favor of Kaiser retiree insurance"?

9 A Correct.

10 Q There are a couple of documents attached to
11 this memo as well.

12 Can you just identify what those documents
13 Mr?

14 A The first document is the opt-down form,
15 where you could opt down to employee only coverage.

16 And the second attachment is the one-time
17 irrevocable election form for Kaiser retirees.

18 Q Is this the form that was actually used by
19 the AKW -- the AKW employees, who were Kaiser
20 retirees, is this the form they actually used to make
21 the election?

22 A Yes. It is.

23 Q What does the form say about the election?

24 A The form states that it is a one-time
25 irrevocable election, that the employee could --

1 Kaiser retiree could elect to participate in the
2 Kaiser retiree plan while actively employed at AKW.

3 That the election would be permanent and
4 irrevocable.

5 And that dependents and as well as the
6 retiree would not be covered at any future time by any
7 AKW medical and life insurance.

8 And the second option is they could elect
9 AKW coverage while actively employed.

10 Q Did you receive election forms from all of
11 the Kaiser retirees who became AKW employees?

12 A There were a couple that were not returned.
13 But the majority of the forms were returned.

14 Q Did any employee select to be covered under
15 AKW medical coverage?

16 A Yes. They did.

17 Q Just so I am clear, did any of the
18 employee -- any of the AKW employees, who were
19 eligible for Kaiser retiree medical, did any of them
20 elect to receive AKW medical coverage?

21 A Yes.

22 Q And are they continuing to be participating
23 in the AKW medical plans up to this time?

24 A Yes.

25 Q And with respect to those AKW employees,

1 who were eligible to receive Kaiser retiree medical,
2 who chose to elect Kaiser retiree medical, were any of
3 those individuals covered by AKW medical coverage at
4 any subsequent time?

5 A No.

6 Q Do you know who Joe Matczak is?

7 A Yes. I do.

8 Q Who is Joe Matczak?

9 A He was or is an employee at AKW who was
10 also a Kaiser retiree.

11 Q Did he submit an election -- an election
12 like the form attached to Company 5?

13 A I believe so.

14 I have to check my documents.

15 Q Did he elect Kaiser retiree medical
16 coverage?

17 A Yes.

18 Q And did he receive Kaiser retiree medical
19 coverage, to your knowledge?

20 A Yes. He did.

21 Q Did he -- was he covered under the AKW
22 medical plan?

23 A No.

24 Q Did he request coverage under the AKW
25 medical plan?

1 A Yes, he did.

2 Q Was it approved or denied?

3 A It was denied.

4 Q Did he grieve that decision?

5 A Yes. He did grieve.

6 Q And what was the result of that grievance?

7 A The grievance was denied.

8 Q Was that grievance taken to arbitration?

9 A Yes. It was.

10 Q Let me mark this as Company 6.

11 (Thereupon, Company Exhibit No. 6 was
12 marked for identification.)

13 THE ARBITRATOR: You refer to this as the
14 Gerhart opinion?

15 MR. MINER: Yes.

16 THE ARBITRATOR: Just keep it simple.

17 Okay?

18 MR. MINER: Thank you.

19 Q What is the Gerhart decision's conclusion
20 with respect to the grievance?

21 A The conclusion was that the grievance was
22 denied.

23 Q And what was the basis for denying the
24 grievance?

25 A The basis was that there was not a dispute

1 that the grievant had opted out of AKW coverage and
2 chose Kaiser retiree coverage, when he retired.

3 Mr. Matczak attempted to enroll in the AKW
4 coverage. And the company properly denied him that
5 option pursuant to the letter of agreement.

6 And also it is noted that Kaiser was in
7 bankruptcy. And the union had asked the arbitrator if
8 Kaiser is solely responsible for Kaiser retiree health
9 care coverage for those working in AKW, because of the
10 opting out opting down language, and if Kaiser is no
11 longer a party to the collective bargaining agreement,
12 who will provide health coverage for Kaiser retirees
13 working at AKW.

14 The arbitrator stated it is a reasonable
15 question, but not one for the arbitrator to answer.
16 There is nothing in the agreement that suggests the
17 parties mutually agreed to put such a question before
18 a grievance arbitrator.

19 Q When was this award issued?

20 A This award was issued September 26th, 2003.

21 Q And at the time, Kaiser was in bankruptcy
22 proceedings?

23 A Yes. They were.

24 Q Do you know what the status of those
25 proceedings is today?

1 A They did do the bankruptcy.

2 And I know that the Kaiser retiree medical
3 plans were terminated as of May 31st, 2004.

4 Q I will ask for you to look at this
5 document. And also ask that this be marked Company 7.

6 (Thereupon, Company Exhibit No. 7 was
7 marked for identification.)

8 MR. MCGOWAN: The only issue I have on
9 Company 7 is what is its relevance to the issue
10 on clarifying the provisions of Joint Exhibit 4,
11 which is the previous contract?

12 MR. MINER: I think what Pat will explain
13 is this is the notice that the company received
14 that Kaiser was requesting the bankruptcy court
15 for permission to terminate its retiree medical.

16 And that precipitated a response from
17 Accuride that resulted in some negotiations in
18 2004.

19 MR. MCGOWAN: Negotiations with whom?

20 MR. MINER: With the UAW.

21 This is simply --

22 THE ARBITRATOR: Just let her explain what
23 it is. I think you just explained what it is,
24 though.

25 MR. MINER: I think I did. Correct me, if

1 will take a break.

2 CROSS EXAMINATION

3 BY MR. MCGOWAN:

4 Q A couple questions on cross examination.

5 The Company Exhibits that you testified to,
6 including the -- I will take you through Exhibits 1
7 through 6.

8 Can you tell me which collective bargaining
9 agreement these documents all pertain to and
10 reference?

11 A It was the collective bargaining agreement
12 that was effective, would have been effective -- May 1
13 of 1997.

14 THE ARBITRATOR: Is that a Joint Exhibit?

15 THE WITNESS: This is the agreement that I
16 was just handed is dated -- it is August 18th,
17 1998.

18 MR. MINER: And you are referring to Joint
19 Exhibit 4.

20 THE WITNESS: Right.

21 THE ARBITRATOR: These all came under Joint
22 Exhibit 4.

23 BY MR. MCGOWAN:

24 Q Do any of the exhibits you testified to --
25 strike that question.

1 Take a look at paragraph 14 of Joint
2 Exhibit 3.

3 That paragraph provides that employees may
4 opt out of medical coverage so long as 75 percent of
5 the employees participate in the plan, in the
6 company's medical plan.

7 What is the significance of that 75 percent
8 participation requirement?

9 A That participation would impact the rights
10 that would be charged by the insurance carrier.

11 Q So that 75 percent figure, that is a
12 requirement of the carrier?

13 A That's correct.

14 That is their standard language in their
15 contract.

16 THE ARBITRATOR: It impacts your rate, how
17 much they are going to charge you per employee
18 based upon volume of employees. Is that
19 correct?

20 THE WITNESS: It would impact the premiums
21 that we would be charged for the coverage.

22 BY MR. MINER:

23 Q What would happen to the rates, if that
24 provision were not in the contract with the medical
25 provider? Just so I understand.

1 A The rates probably would increase.

2 MR. MINER: Thank you.

3 MR. McGOWAN: Just one other question.

4 RECROSS EXAMINATION

5 BY MR. McGOWAN:

6 Q So the company's security on maintaining --
7 is it fair to say the company's security at
8 maintaining negotiated or acceptable rates with the
9 carrier is dependent upon maintaining the 75 percent
10 minimum level of participation?

11 A Yes.

12 MR. McGOWAN: No further questions.

13 THE ARBITRATOR: Okay. We will take a five
14 minute break.

15 (Recess taken.)

16 MR. MINER: I have one followup question
17 for Pat Wolf.

18 REDIRECT EXAMINATION

19 BY MR. MINER:

20 Q Looking back at Joint Exhibit No. 3, I was
21 asking you to look earlier at paragraph 14.

22 I asked you about the 75 percent
23 participation figure.

24 Was that -- with respect to the premiums
25 that were calculated in August of 2003 with the

1 medical provider, was that 75 percent participation
2 figure calculated with respect to the entire universe
3 of Accuride Erie, LP employees, or did it exclude the
4 Kaiser retirees, who had opted out of AKW medical
5 coverage?

6 A It excluded the Kaiser retirees.

7 MR. MINER: Thank you.

8 That is the only additional question I
9 have.

10 MR. McGOWAN: Just a couple of questions on
11 cross to clarify.

12 RE CROSS EXAMINATION

13 BY MR. McGOWAN:

14 Q The provision you were talking about, the
15 75 percent minimum participation level, can you tell
16 me in what document that it came from?

17 A It came out of the Health America contract
18 agreement.

19 Q And specifically, on the company documents
20 that were presented, what year were you talking about
21 on that document, that 75 percent pertained to?

22 A The Health America plans became effective
23 October 1, 2003.

24 Q And if you could help me out, Fred, where
25 was the company document you were referring to on the

1 75 percent?

2 MR. MINER: Joint 3, paragraph 14.

3 Q So the 75 percent level excluded the
4 employees, who were then receiving medical insurance
5 through Kaiser?

6 A The Kaiser retirees, yes, that were not
7 participating in the AKW plans.

8 Q And no further questions.

9 THE ARBITRATOR: Union may go ahead and
10 present the information in a way you are
11 comfortable.

12 MR. MCGOWAN: I will call to the stand Gary
13 Montroy.

14 GARY MONTROY

15 called as a witness by the union, having been first
16 duly sworn, as hereinafter certified, was examined and
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MCGOWAN:

20 Q Gary, could you state your name and spell
21 it, please?

22 A Gary Montroy. M-O-N-T-R-O-Y.

23 Q And are you currently employed by Accuride
24 Erie, Gary?

25 A Yes. I am.

1 Q And did the union ever raise the issue or
2 propose that the transitional terms be included in the
3 new contract?

4 A Yes.

5 Doug Ferguson, our president, proposed that
6 we continue to keep those transitional issues in the
7 contract.

8 Q And how did the company respond to that
9 proposal?

10 A The company didn't really want to keep
11 them.

12 They were hesitant in keeping anything.

13 Q And did the company ever respond in any
14 transitional issues in the settlement agreement in
15 front of you?

16 A It was some time afterwards, we had
17 questions on seniority.

18 For instance, myself, Accuride was in
19 business for seven years, but I got 32 years of
20 seniority. How is that going to be explained?

21 How is that going to be taken with our
22 pension, involvement with our pension and stuff?

23 And we were concerned that it wasn't
24 explained in the present contract.

25 And there were other issues in the

1 transitional issues that we wanted --

2 Q Do any of the transitional issues appear in
3 the memorandum of settlement?

4 A Yes.

5 Those issues, which the company felt that
6 they could go along with, were added.

7 Q And can you point those out to us in the
8 memorandum?

9 A Yes.

10 It starts on page 6, title "transitional
11 issues".

12 Paragraph 22.

13 And it goes on to page 7.

14 And it has 22A, B, C and D.

15 Q And in paragraphs A, B, C and D, in the
16 memorandum of settlement, do any of those refer to any
17 continuation of the letter of agreement or medical
18 insurance opt-out provisions?

19 A No.

20 Q Right now the current contract and
21 negotiations, did you negotiate with any
22 representatives of Kaiser for the current collective
23 bargaining agreement?

24 A No.

25 Q Were any representatives of Kaiser present

1 medical?

2 A No.

3 Q You weren't.

4 So you didn't have the opportunity to make
5 an election regarding Kaiser retiree medical versus
6 AKW medical?

7 A No.

8 Q How about those employees that were
9 eligible for Kaiser retiree coverage.

10 Are you aware of employees in the plant who
11 elected Kaiser retiree coverage?

12 A Yes. I am aware of employees who did that.

13 Q They were not covered, correct; during the
14 term of the expired agreement, Joint Exhibit 4, the
15 prior agreement, the '98 through 2003 agreement?

16 A Covered by?

17 Q Covered by AKW medical coverage.

18 A No.

19 Q When did they become eligible for Accuride
20 medical coverage?

21 A When did they become eligible?

22 Q Yes.

23 What is the union's position on that?

24 A As of the beginning of September.

25 September 1st.

1 Q Did any of those folks request coverage
2 under the company's medical plan?

3 A Not that I am aware of.

4 Q Do you know when the first time was that an
5 individual requested coverage under the company's
6 medical plan since September 2003?

7 A I believe it was when a company posted that
8 the Kaiser employees' insurance was going to be
9 terminated.

10 Q Do you know how the request was made to the
11 company for those employees to be covered?

12 A How the request was made?

13 Q Yes.

14 Did the union present the request? Did
15 individual employees make the request?

16 Did they submit application forms?

17 How was request made?

18 A I can't recall.

19 It seems to me that the union requested in
20 a number of meetings that the company should be
21 picking up that insurance when Kaiser insurance was
22 dropped.

23 Q Are you familiar with the Matczak
24 arbitration case?

25 A Vaguely.

1 THE ARBITRATOR: And decide if you have
2 anything else.

3 MR. MCGOWAN: I don't know if we will have
4 any further witnesses, because in order to avoid
5 redundancy.

6 THE ARBITRATOR: I don't want to hear
7 anything twice.

8 (Recess taken.)

9 THE ARBITRATOR: Anything additional?

10 MR. MCGOWAN: Yes. A couple of questions
11 on redirect. Then I think we will be finished
12 with the witness.

13 THE ARBITRATOR: Okay.

14 BY MR. MCGOWAN:

15 Q I would like to direct your attention,
16 Gary, to Joint Exhibit No. 2. The grievance packet.

17 Can you tell me what date that grievance
18 was filed?

19 A June the 8th of '04.

20 Q And can you tell me why it was filed in
21 June?

22 A Those persons were covered by the Kaiser
23 insurance.

24 That insurance ended, I think it was May
25 31st.

1 And we requested from the company to cover
2 them.

3 They denied that request.

4 Q And approximately, to the best of your
5 memory, when did you make the request to the company
6 to cover the Kaiser -- by Kaiser retirees, were these
7 people ex-employees of Accuride, or were they
8 currently actively working at Accuride as employees?

9 A They were active employees.

10 And if I am not mistaken, at a couple of
11 grievance meetings we requested that knowing this was
12 going to happen. And the company called a couple
13 meetings. We had a couple meetings with the company.

14 And they denied us coverage for these
15 employees.

16 And then we filed a grievance.

17 Q Do you recall during -- previous to the
18 filing of that grievance, during those meetings with
19 the company, what was the union's position on why the
20 company should present health insurance for those
21 employees?

22 A We felt that under the current contract,
23 they could pick up the AKW insurance.

24 This insurance was dropping. We felt we
25 could pick it up.

1 knowledge, of the meeting that you missed?

2 A The meeting I missed was a session that was
3 set up for Health America officials to come in and
4 explain some of their policies in greater detail.

5 Q During the negotiation process leading up
6 to the achievement of the 2003 collective bargaining
7 agreement, was there any bargaining over the subject
8 of the Joe Matczak grievance that had been submitted
9 to Arbitrator Gerhart?

10 A No.

11 Q When did that award issue?

12 A I think the award came out in September of
13 2003.

14 I think it was September 26.

15 Q And the new agreement came in to effect
16 September 1st. Correct?

17 A Right.

18 Q During the negotiations leading up to the
19 achievement of the new agreement, was there any
20 bargaining over the subject of covering the employees,
21 who had elected to receive Kaiser retiree medical and
22 opted out of AKW medical?

23 A No.

24 Q What is the status of the Kaiser retiree
25 medical plan, to the best of your knowledge?

1 A Our thought in May of 2004 was that it was
2 going to be terminated May 31st, 2004.

3 But I have not heard anything definite on
4 that either way.

5 Q How did you get notice of Kaiser's
6 intention with respect to its retiree medical?

7 A Probably it was teed up through Pat.

8 I know we began having some discussions
9 probably late first quarter of 2004 about the fact
10 that it looked like Kaiser was going to terminate
11 their retiree medical insurance for both hourly and
12 salary groups.

13 And I think we probably were aware there
14 was a date of 5-31-04 that was out there.

15 Q I will give you a series of documents and
16 ask you to look at them and identify them.

17 I think we are up to Company Exhibit No. 8.

18 (Thereupon, Company Exhibit No. 8 was
19 marked for identification.)

20 Q I will share that document with you.

21 And also ask that this letter be marked
22 Company 8.

23 Are you familiar with this?

24 A Yes.

25 MR. MCGOWAN: The only issue I am going to

1 be raising on this is since this is -- and I am
2 going to assume some subsequent documents that
3 may be provided by the company are negotiations
4 in an attempt to settle the issue in front of the
5 arbitrator. They basically constitute parties'
6 proposals on settlement issues.

7 And as such, it is my understanding that
8 they should be excluded from presentation before
9 the arbitrator.

10 THE ARBITRATOR: Does this contain
11 settlement offers?

12 MR. MINER: No. The grievance had not even
13 been submitted at the time this --

14 THE ARBITRATOR: If this document itself
15 doesn't contain settlement offer --

16 MR. MCGOWAN: If I may proceed, the
17 grievance was filed in June because the actual
18 occurrence of the violation occurred in June due
19 to the company's continued refusal to provide the
20 insurance.

21 The parties were well aware that this
22 action of the insurance termination was going to
23 occur well before the filing of the grievance.

24 Pursuant to that, and the parties then
25 engaged in several meetings over this issue,

1 proposals were put back and forth to settle the
2 issue.

3 THE ARBITRATOR: But we aren't going to
4 talk about those proposals. I am just letting
5 you put this document in the record. If he tries
6 to go in to something objectionable, you can
7 repeat your objection, and I will not let you get
8 in to settlement negotiations.

9 MR. MCGOWAN: Well, this document does
10 contain settlement terms.

11 THE ARBITRATOR: Where is that?

12 MR. MINER: It does not contain settlement
13 terms concerning any grievance that was alive at
14 any time in April of or May of 2004.

15 The grievance was submitted later.

16 This document reflects an offer by the
17 company to provide benefits to its employees that
18 it had no obligation to make.

19 And nevertheless, proposed to make in order
20 to alleviate the impact on this group of its
21 employees, who were experiencing the effect of
22 Kaiser's termination of its retiree medical.

23 MR. MCGOWAN: And I have no contest to
24 exactly what you said from your perspective.

25 However, during this entire process, and

1 during this period of time, the union was taking
2 the position that the company pursuant to the
3 contractual terms had to provide the insurance to
4 these affected employees, the same as any other
5 employee group.

6 THE ARBITRATOR: Is any proposal in here
7 not uniform or the same as the benefits offered
8 to the Kaiser retirees who elected to stay with
9 AKW insurance?

10 MR. MINER: This bargaining process only
11 dealt with those individuals who would be
12 affected by Kaiser's termination.

13 THE ARBITRATOR: You didn't understand my
14 question.

15 If I were a Kaiser employee -- Thomas Duda,
16 I remember reading that name.

17 Thomas Duda elected not to go with Kaiser.

18 Thomas Duda, presumably, if he were still
19 employed, say he is, he has the AKW insurance.

20 MR. MINER: Yes.

21 THE ARBITRATOR: So he is similarly
22 situated to any Kaiser retiree employee at the
23 time of the irrevocable election.

24 MR. MINER: Correct.

25 THE ARBITRATOR: Now, is what you are

1 offering in this document different than what
2 Thomas Duda has?

3 MR. MINER: Yes.

4 THE ARBITRATOR: Then it is a settlement
5 offer. I will disregard anything that is content
6 wise as a settlement offer.

7 MR. MINER: The purpose of excluding
8 settlement discussions is to encourage resolution
9 of disputes between the parties.

10 If it were the case that bargaining
11 concerning issues that are raised by later filed
12 grievances could not be considered in an
13 arbitration, we would never get in to any
14 bargaining history.

15 This is bargaining --

16 THE ARBITRATOR: I will let you put the
17 document in, but I am not going to give any
18 weight to settlement offers or anything perceived
19 to be a settlement offer within the document.

20 MR. MCGOWAN: Then in the issue of
21 fairness, the union requests that one more
22 document be presented.

23 THE ARBITRATOR: You can present that.

24 MR. MCGOWAN: It is in regards to these
25 documents you are presenting.

1 THE ARBITRATOR: You can supplement the
2 record.

3 I am saying I agree with your objection, to
4 the extent anything contains a settlement offer,
5 because ultimately, the same issue is now before
6 me. Whether the grievance was filed then or
7 there, here is where we are.

8 So it is in the record. Let's move on.
9 You guys are nitpicking, you are bickering.

10 Continue.

11 BY MR. MINER:

12 Q Mike, what is the document, what is Company
13 Exhibit 8?

14 A Well, it is a letter that we provided to
15 the union explaining proposals that we prepared to
16 address the potential situation where the Kaiser
17 employees would be without insurance of Kaiser as
18 retirees.

19 Q As of April 2nd, 2004, that is the date on
20 the letter, right?

21 A I am sorry?

22 Q What is the date?

23 A April 2nd, 2004.

24 Q As of April 2nd, 2004, what was the
25 company's position with respect to its potential

1 liability or its obligation to provide medical
2 benefits for the employees, who had elected to receive
3 Kaiser medical benefits?

4 A We felt there was no contractual obligation
5 to provide that coverage.

6 Q So why send Company Exhibit 8; what was the
7 purpose of the April 2nd letter?

8 A Well, we were looking at a potential
9 situation where the employees would be without
10 insurance. And we wanted to try and address that.

11 Q So what were the company's proposals?

12 A What we call proposal A --

13 THE ARBITRATOR: If it is in the letter,
14 you don't need to go in to it. Now we are
15 getting in to settlement details. I don't need
16 to have that.

17 You took the position you weren't obligated
18 to do anything. You made a proposal to do
19 something.

20 They rejected it and said it should be
21 treated like everybody else. And here we are.

22 MR. MINER: Fair enough.

23 THE ARBITRATOR: And I presume that nothing
24 was unilaterally implemented for these employees
25 over the union's objection. Because I understood

1 from the opening statement --

2 MR. MCGOWAN: Nothing other than the
3 absence of insurance.

4 THE ARBITRATOR: That is what I meant. So
5 you didn't go forward and just say we are going
6 to do this regardless and the union's objection.

7 BY MR. MINER:

8 Q Is that correct, Mike?

9 A Yes.

10 THE ARBITRATOR: That is why we are here.

11 Do you want to put that supplemental
12 document in now?

13 MR. MINER: I have a few additional
14 documents first.

15 Q After this letter was sent to Mr. Ferguson,
16 were there meetings between the company and the union
17 to discuss the contents of the letter?

18 A Yes. We met two days, May 13th and 14th,
19 here in Erie.

20 Q May 13th and 14th of 2004?

21 A Yes.

22 Q Were there any other meetings to discuss
23 this letter?

24 A No.

25 Q What was the union's position at the

1 meetings?

2 A Well, initially, they had first day there
3 were a lot of questions about the programs mentioned
4 in the letter.

5 The second day, we were able to respond to
6 a lot of their questions based on information we had
7 pulled off the IRS web site about the health care tax
8 credit program.

9 And when the parties left on the 14th, they
10 were going to take -- my understanding is they would
11 take it to the membership to make a determination
12 whether or not to accept what we suggested.

13 Q Did the union take the position that the
14 company was obligated to include the employees, who
15 had opted out of AKW medical coverage in the AKW
16 medical plan, in the company's medical plan?

17 A Yes.

18 That is when they brought up the argument
19 about the last paragraph of the memorandum of
20 understanding.

21 Q What was the company's response to that?

22 A Well, we said that employees made a
23 one-time irrevocable election back in '97.

24 And that --

25 THE ARBITRATOR: This is all repetitive. I

1 understand what you did.

2 Q But there was that discussion at the
3 meeting?

4 A Yes.

5 Q Great.

6 THE ARBITRATOR: There was no meeting of
7 the minds, so I am here.

8 Q There was no meeting of the minds, correct?

9 A Correct.

10 Q Company Exhibit 9.

11 (Thereupon, Company Exhibit No. 9 was
12 marked for identification.)

13 MR. MINER: Maybe this is the letter you
14 were going to suggest.

15 MR. McGOWAN: Yes.

16 Q What is this document, Mike?

17 A It is a letter I received from Mr. McGowan.

18 It is dated I think June 7th is when I
19 received it.

20 Q What is the letter --

21 THE ARBITRATOR: It speaks for itself.

22 Q I will offer one more letter, I think.

23 This will be Company 10.

24 (Thereupon, Company Exhibit No. 10 was
25 marked for identification.)